

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
EUREKA DIVISION

DAVID ROBERTS,
Plaintiff,

v.

MONTEREY COUNTY JAIL, et al.,
Defendants.

Case No. 20-cv-06113-RMI

**ORDER FOR PLAINTIFF TO SHOW
CAUSE**

Plaintiff, a former detainee at the Monterey County Jail, and currently a state prisoner, has filed a *pro se* civil rights complaint under 42 U.S.C. § 1983. Plaintiff has also filed an application to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915.¹

The Prison Litigation Reform Act of 1995 (“PLRA”), provides that a prisoner may not bring a civil action or appeal a civil judgment under 28 U.S.C. § 1915 “if the prisoner has, on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g). The phrase “fails to state a claim on which relief may be granted,” as used in § 1915(g), “parallels the language of Federal Rule of Civil Procedure 12(b)(6).” *Andrews v. King*, 398 F.3d 1113, 1121 (9th Cir. 2005) (internal quotation marks omitted). A case is “frivolous” within the meaning of § 1915(g) if “it is of little

¹ Plaintiff submitted several filings in other cases that included this docket number, but were not filed in this action. Plaintiff has submitted an *in forma pauperis* application and a change of address. *See Roberts v. Davis*, No. 20-cv-7032 SI (dks. 8, 10).

weight or importance: having no basis in law or fact.” *Id.* (internal quotation marks omitted).

Andrews requires that a prisoner be given notice of the potential applicability of § 1915(g), by either the district court or the defendants, but also requires the prisoner to bear the ultimate burden of persuasion to convince the court that § 1915(g) does not bar *in forma pauperis* status for him. *Andrews*, 398 F.3d at 1121. *Andrews*, therefore, implicitly allows the court to *sua sponte* raise the § 1915(g) issue, but requires the court to notify the prisoner of the earlier dismissals that the court considers to support a § 1915(g) dismissal and to allow the prisoner an opportunity to be heard on the matter before dismissing the action. *Andrews*, 398 F.3d at 1120. A dismissal under § 1915(g) means that a prisoner cannot proceed with his action as a pauper under § 1915, but he still may pursue his claims if he pays the full filing fee at the outset of the action.

It appears that Plaintiff has at least three strikes pursuant to § 1915(g):

1. *Roberts v. Huckleberry*, No. 18-1237 DAD SAB (E.D. Cal.), dismissed for failure to state a claim (dkt. 57).
2. *Roberts v. KVSP Investigation Service Unit*, No. 19-1055 AWI SAB (E.D. Cal.), dismissed for failure to state a claim (dkt. 12, 14).
3. *Roberts v. Riverside County Superior Court*, No. 19-0446 VBF RAO (C.D. Cal.), dismissed for failure to state a claim (dkt. 9).
4. *Roberts v. Riverside County Superior Court*, No. 20-0197 VBF RAO (C.D. Cal.), dismissed for failure to state a claim. (dkt. 4).
5. *Roberts v. CDCR Trust Office*, No. 20-0977 VBF RAO (C.D. Cal.), dismissed as frivolous, malicious or for failure to state a claim (dkt. 5).

Plaintiff is **ORDERED** to show cause within **twenty-eight (28) days** of service of this order, why this case should not be deemed three-strikes barred under § 1915(g), and why his application to proceed *in forma pauperis* should not be denied, resulting in the dismissal of his case. In the alternative to showing cause why the action should not be dismissed, Plaintiff may avoid dismissal by simply paying the full \$402.00 filing fee within the deadline set forth above. Failure to either show cause, or to pay the full filing fee, may result in dismissal. The Clerk shall **UPDATE** Plaintiff’s address and inmate number to David Roberts, #BA0958, Wasco State Prison, P.O. Box 7700, Wasco, CA 93280.

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IT IS SO ORDERED.

Dated: January 25, 2021

A handwritten signature in black ink, appearing to read 'RMILLMAN', is written over a horizontal line.

ROBERT M. ILLMAN
United States Magistrate Judge

United States District Court
Northern District of California